

reviewed the drawings and has not found anything that would constitute new matter that is not supported by the specification. As such, the applicant requests that the Examiner point out the specific figures and the specific elements thereof that are alleged to be new matter that is not supported by the specification.

Additionally, the drawings were objected to because reference numeral 18 appears missing from FIG. 1, the leader for reference numeral 35 appears misdirected in FIG. 2, the crosshatching is inaccurate as to material in FIG. 3, and reference numeral 54 is missing from FIG. 5.

In response, the figures have been amended. In reviewing the FIG. 1, it appears that it is present in this figure, so no action has been taken. Applicant has highlighted it for the Examiner in the proposed drawing changes. As to FIG. 2, the leader for reference numeral 35 is made a little longer, but it appears to point to the part discussed in the application on page ² line ~~22~~. Additionally, the applicant has amended FIG. 3 to delete the crosshatching. The applicant further amended FIG. 5 to show reference numeral 54. Applicant provides a copy of the proposed drawing changes herewith. Applicant notes that, with the exception of extending the leader in FIG. 2, these are the same proposed drawings made to the original drawings as submitted in the original application that the applicant submitted with the applicant's papers on September 8, 2002 and February 19, 2002. **If these proposed drawing changes made to the original drawings in red are insufficient, the applicant requests to know what specifically is wrong with them.**

II. The Rejection under 35 USC 112 of Claims 13, 16 and 17.

Claims 13, 16 and 17 stand rejected under 35 USC 112, second paragraph, as being indefinite. The Examiner contended that Claim 13 is unclear as to whether the "standard sink or drain opening" is intended to be part of the claimed combination since such is currently inferentially recited. Claims 16

and 17 were contended to lack antecedent basis for "said head".

In response, as to Claim 13, applicant does not understand how a standard sink or drain opening could be considered to be inferentially claimed, since a void or a hole cannot be a claimed element. Applicant has rewritten Claim 13, however. Additionally, the applicant has amended Claims 16 and 17 to provide antecedent basis.

III. The Rejection under 35 USC 102(b) of Claims 10, 11, 13, 14, 16, 1 , 2, 6 and 9.

Claims 1-2, 6, 9, 10, 11, 13, 14, and 16 stand rejected under 35 USC 102(b) as being anticipated by Scarella (French publication 2540943). It was contended in the above-identified Office Action that Scarella teaches all the elements of the rejected claims. The applicant respectfully traverses this contention of anticipation.

The applicant's claimed invention teaches three sealing rings of a shape, size, and location such that the claimed plunger will efficiently seal against a toilet or sink drain hole regardless of the size or shape of the hole, thereby providing a more effective suction and driving force for the plunger when it is operated to clear the drain hole. Claims 1-4 and 6-12 specify that the sealing means comprises an upper first ring-shaped seal (32), a bulbous annular curved second ring-shaped seal (36), depending from the first ring and a third bottom ring-shaped seal secured to the second seal, smaller in diameter than the second ring. Claim 7 further specifies that the second ring-shaped seal is of a substantially greater height than the first and second rings and of a continuously curved bulbous shape with its lower end of less diameter than its upper end. Claims 10-12 describe the seals as being ring-shaped, vertically spaced and of progressively smaller diameter from the uppermost ring to the lowermost ring.

Scarella teaches a device that has a bi-conical pocket with a handle that can be used as a pump to move air or liquids in drains without having to withdraw the apparatus to renew its volume. The Examiner contends that the bellows is indicated by reference number 5, and three ring-shaped seals 7, 8 are shown. However, Scarella does not teach reference numbers 7 and 8 as being seals. Reference number 8, in fact, refers to a cylinder which allows the water retention and hydraulic work. (Per Google's translation feature, on page 2, lines 30-32, "Le cylindre 8, plus restraint, permet la retention d'eau et le travail en hydraulique." translates to "Cylinder 8, more restricted, allows the water retention and work in hydraulics". It is obvious, in fact, by looking at the drawings (FIGs. 4 and 5) that the external structure that the Examiner claims is a seal is not a seal at all, but is simply the external wall of the annular slot that is used to seat the part of the Scarella device indicated by reference number 11.

Furthermore, it is obvious that the bump the Examiner refers to by reference numeral 8 could not be a seal because the bottom of the Scarella device (indicated by reference numeral 9) is much larger than the aforementioned bump. In fact, both the section above and below are much wider so this bump could not possibly operate as a seal.

As to the structures of reference 7, Scarella also does not teach these as seals, but as "anchoring and indicating veins. Per the Goggle search engine's translator, page 4, lines 9-21, translate as,

"Structure 6. Conical, slightly deformable body by internal pressure. Function. The conical body, especially designed to penetrate inside the siphons of toilet bowl is graduated outside by veins, delimiting and indicating the m of penetration, is appropriate to each model of basin. These veins are used as anchoring...the cone...during the operation of strong compression. Under the pressure; cone 6, inflates slightly and its external part is plated in the interior of the siphon, it marries the form and creates the sealing of it.

Structure 7. Indicating veins...and anchoring. Their function is described in the preceding paragraph."

~~Thus the Scarella reference does not teach that structures 7 and 8 are seals.~~

The applicant, however, describes a plunger having three sealing rings of a shape, size, and location such that the claimed plunger will efficiently seal against a toilet or sink drain hole regardless of the size or shape of the hole, thereby providing a more effective suction and driving force for the plunger when it is operated to clear the drain hole. This sealing means comprises an upper first ring-shaped seal (32), a bulbous annular curved second ring-shaped seal (36), depending from the first ring and a third bottom ring-shaped seal secured to the second seal, smaller in diameter than the second ring. The second ring-shaped seal is of a substantially greater height than the first and second rings and of a continuously curved bulbous shape with its lower end of less diameter than its upper end. The seals are ring-shaped, vertically spaced and of progressively smaller diameter from the uppermost ring to the lowermost ring. This will provide a superior ability to dislodge any objects lodged in the drain of the toilet as opposed to a typical plunger or other device, such as that taught in Scarella. Thus, the applicant has claimed an element not taught in Scarella, namely ring-shaped, vertically spaced sealing rings that are of progressively smaller diameter from the uppermost ring to the lowermost ring. As such, the rejected claims are not anticipated by the reference. It is, therefore, respectfully requested that the rejection of Claims 1-2, 6, 9, 10, 11, 13, 14, and 16 be reconsidered based on the distinguishing claim language, i.e.:

"A toilet and sink drain plunger comprising...toilet and sink drain hole **sealing rings** integral with the lower end of said bellows, **said sealing rings comprising...an upper annular curved first ring depending from the lowermost portion of said bellows cooperating therewith to form on the outer surface a first drain hole seal; a**

**bulbous annular curved second ring depending from said first ring,
located relative to said first ring to form on its outer surface a
second seal smaller than said first seal; and, a third bottom ring
~~secured to the underside of said second seal, smaller in diameter~~
than said second seal, the outer surface of said bottom ring forming
a third seal, said seals being integral with each other and said bellows
and having a central opening therein communicating with said bellows
space."**

IV. The Rejection under 35 USC 103(a) of Claims 12, 15, 17, 3 and 4.

Claims 3, 4, 12, 15 and 17 were rejected as being obvious over Scarella in view of Tash, U.S. Patent No. 4,745,641. It was contended in the Office Action that it was considered obvious to make the Scarella device out of plastic as allegedly taught by the combination of Scarella in view of Tash. The applicant respectfully traverses this contention of obviousness.

In order to deem the applicant's claimed invention unpatentable under 35 USC 103, a prima facie showing of obviousness must be made. To make a prima facie showing of obviousness, all of the claimed elements of an applicant's invention must be considered, especially when they are missing from the prior art. If a claimed element is not taught in the prior art and has advantages not appreciated by the prior art, then no prima facie case of obviousness exists. The Federal Circuit court has stated that it was error not to distinguish claims over a combination of prior art references where a material limitation in the claimed system and its purpose was not taught therein (*In Re Fine*, 837 F.2d 107, 5 USPQ2d 1596 (Fed. Cir. 1988)).

The applicant's claimed invention includes three sealing rings of a shape, size, and location such that the claimed plunger will efficiently seal against a toilet or sink drain hole regardless of the size or shape of the hole, thereby providing a more effective suction and driving force for the plunger when it is operated to clear the

drain hole. Claims 1-4 and 6-12 specify that the sealing means comprises an upper first ring-shaped seal (32), a **bulbous annular curved** second ring-shaped seal (36), depending from the first ring and a third bottom ring-shaped seal secured to the second seal, smaller in diameter than the second ring. Claim 7 further specifies that the second ring-shaped seal is of a substantially greater height than the first and second rings and of a continuously curved bulbous shape with its lower end of less diameter than its upper end. Claims 10-12 describe the seals as being ring-shaped, vertically spaced and of progressively smaller diameter from the uppermost ring to the lowermost ring.

As discussed above, Scarella teaches a device that has a bi-conical pocket with a handle that can be used as a pump to move air or liquids in drains without having to withdraw the apparatus to renew its volume. The Examiner contends that the bellows is indicated by reference number 5, and three ring-shaped seals 7, 8 are shown. However, Scarella does not teach reference numbers 7 and 8 as being seals for the reasons discussed above. It is obvious, in fact, by looking at the drawings (FIGs. 4 and 5) that the external structure that the Examiner claims is a seal (8) is not a seal, but is simply the external wall of the annular slot that is used to seat the part of the Scarella device indicated by reference number 11. Furthermore, it is obvious that this external structure could not be a seal because the bottom of the Scarella device (indicated by reference numeral 9) is much larger than the aforementioned bump. In fact, both the section above and below are much wider so this external structure could not operate as a seal. As to the structures of reference 7, Scarella also does not teach these as seals, but as "anchoring and indicating veins".

Tash may teach a plunger made of plastic. However, Tash does not teach the applicant's claimed three sealing rings, especially the bulbous curved second seal.

Figure 5 of the drawings in the present application demonstrates how the two

lower seal rings efficiently engage the surfaces defining the drain hole to be plunged by the present claimed plunger.. This sealing engagement is especially due to the **second bulbous annular curved sealing ring**. The shape of this bulbous curved sealing ring allows a tight seal to be formed with a variety of drain openings, even those that are of a slightly graduated diameter. This sealing engagement clearly would not be possible with the Scarella device, especially since the bottom of the plunger (9) is much wider than the external wall discussed above. Moreover, although Tash may teach a plunger made of plastic, it does not show the three sealing rings of the present claims, their size, shape and relative location. **None of the cited references disclose plungers have the claimed structure.** It should be noted that the plungers of the cited references are incapable of being used efficiently on both sink drain holes and toilet drain holes, particularly toilet drain holes of drastically different configurations. Thus, the claimed sealing rings have advantages, which are not appreciated in the cited art.

Thus, the applicant has claimed elements not taught in the cited art and which have advantages not recognized therein. Accordingly, no prima facie case of obviousness has been established in accordance with the holding of *In Re Fine*. This lack of prima facie showing of obviousness means that the rejected claims are patentable under 35 USC 103 over Scarella and Tash. As such, it is respectfully requested that the rejection of Claims 3, 4, 12, 15 and 17 be reconsidered based on the following non-obvious claim language:

“A toilet and sink drain plunger comprising: ...a handle; ...a bellows secured to said handle; and, ...**toilet and sink drain hole sealing rings integral with the lower end of said bellows**, said sealing rings comprising, ... an **upper annular curved first ring** depending from the lowermost portion of said bellows cooperating therewith to form on the outer surface a first drain hole seal;...**a bulbous annular curved second ring** depending from said first ring, located relative to said first ring to form on its outer surface a second seal smaller than said first seal; and, **a third**

bottom ring secured to the underside of said second seal, smaller in diameter than said second seal, the outer surface of said bottom ring forming a third seal, said seals being integral with each other and
~~said bellows and having a central opening therein communicating with said bellows space."~~

V. **The Rejection under 35 USC 103(a) of Claims 10-17, 1-4, 6 and 9.**

Claims 1-4, 6, 9 and 10-17 were rejected as being obvious over Scarella, Locke, U.S. Patent No. 1,644,436, and Tash, U.S. Patent No. 4,745,641. It was contended in the Office Action that it was considered obvious to make the alleged sealing rings of the Scarella device continuous as is allegedly taught by the combination of Scarella, Locke and Tash. The applicant respectfully traverses this contention of obviousness for the reasons specified in the discussion above of the rejection based on Scarella and Tash as neither of the references teach the applicant's claimed three sealing rings, especially the bulbous curved second seal.

Locke teaches a non-plunging drain cleaner wherein the upper portion of the cup is made of hard rubber or other suitable material. The side wall portion of the cup is integral with the upper portion but is of thin, flexible rubber and is formed in a series of annular, corrugations which permits the cup wall to be compressed and to expand in the axial direction. **Locke does not teach the applicant's claimed sealing rings.**

Figure 5 of the drawings in the present application demonstrates how the two lower seal rings efficiently engage the surfaces defining the drain hole to be plunged by the present claimed plunger. This sealing engagement is especially due to the **second bulbous annular curved sealing ring. The shape of this bulbous curved sealing ring allows a tight seal to be formed with a variety of drain openings, even those that are of a slightly graduated diameter. This sealing engagement clearly would not be possible with the Locke device, if it were**

combined with the Scarella device, which also does not teach sealing rings as discussed above. Moreover, Tash also does not show the three sealing rings of the present claims, their size, shape and relative location. **Accordingly, there is no disclosure, whatsoever which is structurally similar to the present claimed sealing rings. None of the cited references disclose plungers, which perform as does the present claimed plunger to efficiently seal a drain hole regardless of its particular contours. It should be noted that the plungers of the cited references are incapable of being used efficiently on both sink drain holes and toilet drain holes, particularly toilet drain holes of drastically different configurations.** Thus, the claimed sealing rings have advantages, which are not appreciated in the cited art.

The applicant has claimed elements not taught in the cited art, which have advantages not recognized therein. As a result, no prima facie case of obviousness has been established in accordance with the holding of *In Re Fine*. This lack of a prima facie showing of obviousness means that the rejected claims are patentable under 35 USC 103 over Scarella, Locke and Tash. It is, therefore, respectfully requested that the rejection of Claims 1-4, 6, 9 and 10-17 be reconsidered based on the above-quoted claim language.

V. The Objection to Claims 7 and 8.

In the Office Action the Examiner stated that Claims 7-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening base claims. Applicant declines to amend Claims 7-8 at this time because it is believed that the foregoing arguments and amendments have placed the base claims in condition for allowance.

VI. **Summary.**

In summary, it is respectfully requested that the foregoing amendments to the ~~existing claims be entered to place them in condition for allowance. Therefore,~~ reconsideration of the rejection of Claims 1-4, 6 and 9-17 is respectfully requested. It is the applicant's position, based on the foregoing amendments and arguments, that all claims are patentable under 35 USC 102 and 35 USC 103 over the cited art. Accordingly, allowance of Claims 1-4, 6 and 9-17, at an early date, is courteously solicited.

Respectfully submitted,


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CLAIM CHANGES MADE THIS AMENDMENT

13. ~~The plunger of Claim 11 wherein one or more of the three seals is~~
slightly larger than an opening of a standard sink or drain[opening].

16. The plunger of Claim 11 wherein said handle is releasably
connected to said [head] bellows.

17. The plunger of Claim 11 wherein said handle is of unitary
construction with said [head] bellows.